

REMARKS

Claims 1 and 3-5 stand rejected under 35 USC 112, second paragraph. Since the Examiner refused to enter applicant's most recent amendment in the Advisory Action dated March 29, 2006, applicant is representing the previous amendment now, with additional amendments. One of the amendments involves inserting the words "connection profiles" between "which" and "are" and a comma before "which" so as to make the phrase read ", which connection profiles are undercut in a complementary manner." Applicant thanks the Examiner for her kind suggestion in the Advisory Action, which overcomes the rejection under 35 USC 112, second paragraph. Other amendments are discussed below.

Before addressing the prior art rejection, applicant wishes to address some of the comments in the Advisory Action regarding the claiming of the angle between the straight connection profile sections. The Examiner seems to dismiss applicant's argument that no one would consider two line segments joined so as to form a straight line to be "at an angle" to one another by saying that applicant is not claiming the angle included between two line segments and by pointing out that an angle may be defined between two planes as well as between two lines. The Examiner also states that applicant did not claim "the reference axes for the angle."

Taking the last statement first, applicant respectfully requests the Examiner to cite to a work of geometry or other such mathematical work to support the assertion that one must define "reference axes" for an angle, whether the angle be between lines or planes, in the context of structures like those claimed. In the case of claim 1 of this application, the connection profiles are on cover plates and the "straight profile sections [of the connection profiles] * * * are disposed symmetrically with respect to an anterior-posterior direction of the prosthesis in an implanted position." Given how the claim recites the structure, the plane in which the straight connection profile sections lie is defined inferentially. Claim 1 also says that the straight profile "sections" are arranged at an angle to one another – the word "section" has clear geometrical significance and refers to a line or plane produced when a plane intersects a two- or three-

dimensional figure, respectively. Thus, in the case, it is clear what the phrase “at an angle” refers to in claim 1 as it stood prior to this preliminary amendment, and it is also clear that two line segments that are joined to form a straight line, or two plane portions that are joined to form a single plane, are not “at an angle to one another” as persons skilled in this art would understand the terms. The Examiner has not explained how defining “reference axes for the angle” would make any difference to this understanding.¹ Thus, the Examiner’s proposed reading is not reasonable. Nonetheless, in order to expedite prosecution applicant proposes to amend claim 1 to state that the straight profile sections are arranged to meet so that an angle included between them is not greater than 150°. This language covers the situations seemingly envisioned by the Examiner and distinguishes the claimed structure over Marnay.

Claims 1 and 3-5 stand rejected as anticipated by Marnay. As noted in applicant’s response of March 2, 2006, which was not entered, applicant has incorporated the language of prior claim 5 into claim 1 above to expedite prosecution. The Examiner reads Marnay as disclosing a prosthesis core 50 that is connected to cover plate 30 by substantially straight connection profiles that are arranged at an angle to one another that “is clearly not obtuse,” referring to a marked up version of Fig. 10 to support the argument. This rejection and its supporting reasoning are respectfully traversed.

From the very unclear figure reproduced in the pending Action it is very difficult to tell exactly what the Examiner identifies as Marnay’s straight connection profiles. Is the Examiner saying that the straight connection profile sections meet at an angle at the point to which the lead line from numeral 35 extends? If so, there are no “profile sections” (as opposed to a single

¹ The Examiner also stated in the Advisory Action, “It is noted that applicant is not claiming an obtuse angle so it is unclear how this definition is pertinent to the rejection applied by the Examiner.” Applicant’s comment to which the Examiner referred, which was at the bottom of page 3 of applicant’s response filed March 2, 2006, simply responded to the bottom of page 2 of the Action dated December 8, 2005, in which the Examiner stated that the alleged connection profiles of Marnay “‘are arranged’ at an angle to one another wherein the angle is clearly not obtuse.” Applicant wanted to make sure the Examiner appreciated that this comment could be interpreted as holding that Marnay’s alleged connection profiles are “at an angle” of 180°, which is not an angle at all and is, indeed, not obtuse.

profile section) that meet “at an angle” to one another since that portion of the connection profiles form a straight line, which at the point of intersection subtends an angle of 180° (not zero degrees as stated by the Examiner on page 4 of the Action). As noted above, no reasonable user of the English language would consider two line segments joined at their ends to form a straight line to be “at an angle” relative to each other, as the phrase connotes some degree of “angularity” of one line relative to the other. The Examiner’s interpretation makes the phrase “at an angle” devoid of all meaning, as it would cover any intersection of lines as the Examiner interprets it. If the Examiner instead says that Marnay’s connection profiles are the sections noted on the sides of Marnay’s cover plate to which the lead line from reference numeral 32 extends, these connection profiles do not “meet.” Either way, Marnay does not disclose or suggest the angled configuration of the straight profile sections as claimed.

Marnay also does not teach or suggest the aspect of the claimed structure of “substantially straight profile sections.” As noted by applicant in his previous response, Marnay shows only a single flat surface 35 that is orthogonal to the AP direction, not the claimed pair of (i.e., two) substantially straight profile sections that are arranged to meet at an angle to each other of no more than 150° as claimed. Marnay discloses no reason to provide such a pair of angled substantially straight profile sections at all. In the pending Action the Examiner failed to respond to this point, which alone should have disposed of the prior rejection of claims 1 and 5.

For these reasons, Marnay does not anticipate claims 1, 3 and 4. Early action allowing claims 1, 3 and 4 is solicited.


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Respectfully submitted,

Dated: April 10, 2006

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